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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,489	08/27/2001	James Malcolm Vignoles	01.018.01	2875

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EXAMINER

SCHUBERT, KEVIN R

ART UNIT PAPER NUMBER

2137

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/938,489	Applicant(s) VIGNOLES ET AL.	
	Examiner Kevin Schubert	Art Unit 2137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,9-17,21-29 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,9-17,21-29,33-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-5,9-17,21-29, and 33-36 have been considered.

Continued Examination Under 37 CFR 1.114

5 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/21/05 has been entered.

10

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

15 (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
20 only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

 Claims 1,3,9-13,15,21-25,27, and 33-36 are rejected under 35 U.S.C. 102(e) as being anticipated
25 by Hoene, U.S. Patent Application Publication No. 2002/0199116.

As per claims 1,13, and 25, the applicant describes a computer program product comprising the following limitations which are met by Hoene:

 (i) reading logic operable to read an update status field associated with a computer file to be
30 scanned by a current malware scanner, said update status field being indicative of an update status of a

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previous malware scanner that has scanned said computer file and associated said update status field with said computer file ([0034]-[0035]);

(ii) comparison logic operable to compare said update status of said previous malware scanner with an update status of said current malware scanner ([0034]-[0035]);

5 (iii) alert issuing logic operable if said update status of said current malware scanner does not match said update status of said previous malware scanner to issue an update status alert indicative of an out-of-date update status for whichever one of said current malware scanner and said previous malware scanner has a most out-of-date update status ([0034]-[0035]);

10 (iv) change logging logic operable to log changes to said update status field to create a change history in an update status tracking database to enable identification of weaknesses within update status management based on the change history ([0025],[0036]);

wherein, if said current malware scanner has a less out-of-date update status than said previous malware scanner, then said update status field associated with said computer file is changed to correspond to said current malware scanner ([0030],[0035]);

15 wherein said update status alert includes one or more of:

(i) a user alert issued on whichever one of said current malware scanner and said previous scanner has a most out-of-date update status ([0030],[0035]-[0036]);

(ii) an administrator alert issued to an administrator of whichever one of said current malware scanner and said previous malware scanner has a most out-of-date update status ([0030],[0035]-[0036]).

20

As per claims 3,15, and 27, the applicant describes the computer program product of claims 1,13, and 25, which are met by Hoene, with the following limitations which are also met by Hoene:

Wherein said update status field is included within an update status file passed together and associated with said computer file between malware scanners ([0033]-[0035]).

25

As per claims 9,21, and 33, the applicant describes the computer program product of claims 1,13, and 25, which are met by Hoene, with the following limitations which are also met by Hoene:

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Wherein said computer file is an e-mail attachment ([0032]).

As per claims 10,22, and 34, the applicant describes the computer program product of claims 1,13, and 25, which are met by Hoene, with the following limitations which are also met by Hoene:

5 Wherein said current malware scanner and said previous malware scanner are part of a tiered malware scanner ([0015],[0033]-[0035]).

As per claims 11,23, and 35, the applicant describes the computer program product of claims 1,13, and 25, which are met by Hoene, with the following limitation which is also met by Hoene:

10 Wherein said update status field includes one or more of:

(i) a malware scanner computer program product identifier;

(ii) a computer hardware identifier;

(iii) a scanner engine program identifier;

(iv) a malware definition data version identifier

15 ([0034]-[0035]).

As per claims 12,24, and 36, the applicant describes the computer program product of claims 1,13, and 25, which are met by Hoene, with the following limitation which is also met by Hoene:

Wherein the malware scanner server to detect one or more of:

20 (i) a computer virus;

(ii) a Trojan computer program;

(iii) a worm computer program;

(iv) a banned computer program;

(v) banned content within an e-mail

25 ([0034]-[0035]).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,4-5,14,16-17,26, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoene in view of Waldin, U.S. Patent No. 6,094,731.

As per claims 2,14, and 26, the applicant describes the computer program product of claims 1,13, and 25, which are met by Hoene, with the following limitation which is met by Waldin:

Wherein said update status field is included as a property field within said computer file (Waldin: Col 5, lines 21-27);

Hoene discloses all the limitations of claims 1,13, and 25. However, Hoene does not disclose that the update status field is included within said computer file. Waldin discloses this idea. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to combine the ideas of Waldin with those of Hoene and include the update status field with the computer file because doing so allows for a convenient way to keep track of the update status field of a computer file.

As per claims 4-5,16-17, and 28-29, the applicant describes the computer program product of claims 3,15, and 27, which are met by Hoene, with the following limitation which is also met by Waldin:

Wherein said update status file and said computer file are combined into a combined file that is passed as a single entity between malware scanners (Waldin: Col 5, lines 21-27; Col 6, lines 1-9).

Response to Arguments

Applicant's arguments with respect to claims 1,13, and 25 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Schubert whose telephone number is (571) 272-4239. The examiner can normally be reached on M-F 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KS


EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER